

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES,)
)
Plaintiff,)
)
v.)
) Civil Action No. 3:13-cv-3236-K
LUMINANT GENERATION)
COMPANY LLC and BIG BROWN)
POWER COMPANY)
LLC,)
)
Defendants.)

**MOTION TO DISMISS
BY DEFENDANTS LUMINANT GENERATION COMPANY LLC
AND BIG BROWN POWER COMPANY LLC**

Defendants Luminant Generation Company LLC and Big Brown Power Company LLC (collectively, “Defendants”) respectfully move this Court to dismiss with prejudice Counts 1–8 of the United States’ complaint (Doc. 2) on three grounds: (1) Counts 1–3 & 6 are time-barred by the five-year statute of limitations at 28 U.S.C. § 2462; (2) Counts 7 & 8 fail to state a claim; and (3) Counts 1–8 must be dismissed because the United States Environmental Protection Agency failed to comply with the mandatory pre-suit notice requirements in 42 U.S.C. § 7413(a)(1) before commencing this action. This motion to dismiss is accompanied by a brief setting forth Defendants’ contentions of fact and law, argument, and authorities and a separate appendix containing materials cited in the brief.

Dated: November 22, 2013

Respectfully submitted,

/s/ P. Stephen Gidiere III

William B. Dawson

Texas State Bar No. 05606300

Michael L. Raiff

Texas State Bar No. 00784803

Russell H. Falconer

Texas State Bar No. 24069695

Gibson Dunn & Crutcher LLP

2100 McKinney Avenue

Dallas, Texas 75201

Phone: (214) 698-3132

Fax: (214) 571-2919

Email: wdawson@gibsondunn.com

mraiff@gibsondunn.com

rfalconer@gibsondunn.com

P. Stephen Gidiere III

Texas State Bar No. 24077984

C. Grady Moore, III

Alabama State Bar No. ASB8266O74C

Thomas L. Casey, III

Alabama State Bar No. ASB5572A27C

Balch & Bingham LLP

1901 Sixth Avenue North, Suite 1500

Birmingham, Alabama 35203

Phone: (205) 251-8100

Fax: (205) 488-5694

Email: sgidiere@balch.com

tcasey@balch.com

Daniel Jude Kelly

Texas State Bar No. 24041229

Associate General Counsel

Energy Future Holdings Corp.

1601 Bryan Street, 43rd Floor

Dallas, Texas 75201

Phone: (214) 812-7182

Fax: (214) 812-6075

Email:

dan.kelly@energyfutureholdings.com

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2013, I electronically filed the foregoing Motion to Dismiss with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Bradford T. McLane
U.S. Department of Justice
Environment & Natural Resources Division
601 D Street NW
Washington, DC 20004

Anna E. Cross
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Dimitri Narciso Rocha
United States Attorney's Office
1100 Commerce Street
Third Floor
Dallas, TX 75242

Elias L. Quinn
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

/s/ P. Stephen Gidere III
Counsel for Defendants